IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10859 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHOKSI TUBE CO.LTD.

Versus

REGIONAL EXECUTIVE

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

Mr. Anand L. Sharma for the respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/04/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the impugned orders dated 23.8.2000 and 31.8.2000 whereby the amount of Rs. 3,67,834/- due from the petitioner under section 4 of the Kerala Fishermen's Welfare Fund Act, 1985 (hereinafter referred to as the

Act) for the relevant period is ordered for remission in the office of the Regional Executive, Kerala Fishermen's Welfare Fund Board within 15 days of the receipt of the order, otherwise it will be recovered as revenue dues under Revenue Recovery Act as provided under sections 16 and 21 of the aforesaid Act without any further notice.

2. The petitioner company is a superstar trading house duly recognised by the Government of India. As per Export-Import policy, a manufacturer/processor/shipper can on its own effect export to the foreign buyer or can route his export through a third party. In the latter eventuality, the shipping documents contain the names of manufacturer/processor/shipper as well as the third party through whom the export is routed. The petitioner company is acting as a third party facilitating the export of various marine products including shrimps. It is stated that the petitioner company does not sign, execute any export document. However, the name of the petitioner company is shown by the said processor in the shipping bills and other documents for the sake of convenience so as to enable the company to realise the foreign exchange in the name of the processors. Under the arrangement, the company makes the payment of 3.5% of the total amount of export incentive to the tune of 5% of the value of goods to be exported to the processor and also gives irrevocable guarantee to the Bankers to transfer total export realisation of the goods in the name of the processor straightway. Out of the aforesaid total amount of export incentive payable to the processor, i.e. 3.5% of the F.O.B. value, 50% is paid by wayof advance whereas remaining 50% is agreed to be paid on pro rata basis for each shipment within 21 days from the date of receipt of negotiation of documents. Thus, the petitioner is receiving only 1.5% of the incentive export for undertaking the role of the third party exporter. The petitioner received the notice dated 20th March, 2000 asking the petitioner to file returns of the sale proceeds for the period from 1.4.97 to 31st March, 1998 and produce the record in support of the above return within seven days of the receipt of the notice. The petitioner filed the returns showing that it is not a processor or trasnporter. Thereafter, the petitioner received another notice dated 4.4.2000 whereby it is shown that the petitioner has carried out business of Rs. 36,90,74,201/- during the aforesaid period and the petitioner was required to file a statement of sale proceeds, but the same has not been filed. On the basis of the record, an amount of Rs. 3,67,834/- was proposed to be 1% of the sale proceeds for the fund of the Board.

3. The learned counsel for the petitioner pointed out that by an application dated 23rd May, 2000 the petitioner has raised objections, but none of the contentions raised by the petitioner in the objections has been considered by the authority and the authority has not given any finding in that respect in the final order dated 23.8.2000. Though it is mentioned in the order that the company has filed objections as mentioned in the enclosure of the order, they were disposed on merits, the copy of the decision on merits has been furnished to the petitioners. Hence the petitioners grievance is that the petitioners obejctions have not been considered at all. The contention of the learned counsel for the petitioners is that the petitioners are not doing business of buying, selling or processing fish for export or domestic marketing including as commission agent or any other mercantile agent or non-resident dealer or agent of non-resident dealer or a local branch of a firm or company or association situated outside the State of Kerala. As such, the petitioners are not liable to pay any amount as required by the impugned order dated 23.8.2000.

4. On the other hand, the learned counsel for the respondents contended that the petitioner company falls within the definition of a "dealer" under section 2(d) of the said Act. This Court has no jurisdiction to entertain the petition. Moreover, the petitioner has an alternative remedy to file an appeal before appropriate authority.

5. I have heard the learned counsel for both the parties. The learned counsel for the respondent is agreed to give an opportunity of hearing to the petitioner and pass appropriate order in accordance with law. In view of the fact that the respondent is ready to afford an opportunity of hearing to the petitioner and consider the objections raised by the petitioners, this petition is being disposed of finally with a direction to the parties. The petitioner is directed to file fresh and detailed objections alongwith all documents in support thereof before the respondent within a period of one month from today and if such objections are filed within stipulated time, the respondent will consider and decide the same by a speaking order in accordance with law, as early as possible and preferably within two months from the receipt thereof. Till the final decision by the respondent authority, the order dated 28th July, 2000 shall be remain in abeyance. The impugned order will be subject to the final decision by the respondent

authority. The respondent authority will pass an appropriate order without being influenced or prejudiced by the impugned order dated 23.8.2000. Rule is discharged accordingly with no order as to costs.

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